

Bulletin

Special Bulletin #7

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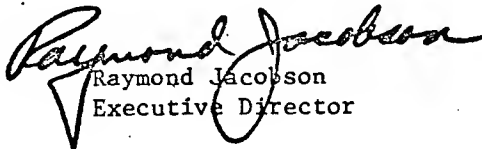
Washington, D. C. 20415
November 16, 1978

SUBJECT: Presidential Exclusion of Agencies From
the Senior Executive Service

Action Date: December 1, 1978

Heads of Departments and Independent Establishments:

1. This Bulletin outlines the procedure for an agency to follow in applying for a Presidential exclusion from the SES.
2. Legal Exclusions. The following are excluded by law from coverage in the SES: legislative and judicial branch agencies, Government corporations, FBI, CIA, DIA, NSA, positions in DEA excluded from the competitive service under 90 Stat. 2425, an agency or unit thereof principally involved in foreign intelligence or counter-intelligence activities, and Foreign Service and Administrative Law Judge positions.
3. Legal Provision for Presidential Exceptions. In addition to the agencies and positions enumerated in (2), the statute provides that an agency may file an application with the OPM setting forth reasons why it, or a unit thereof, should be excluded from SES. OPM must review the application and recommend to the President whether the agency or unit should be excluded. The attachment outlines procedures for Presidential exclusions.
4. If you foresee difficulties in following the outlined procedures, please inform us as promptly as possible. Written comments should be received by December 1, 1978. However, realizing that some agencies may wish to proceed immediately with an application for Presidential exclusion I suggest using these tentative procedures as guidelines. It should be recognized, however, that such exceptions will be recommended by OPM only in very special circumstances.


Raymond Jacobson
Executive Director

Attachment

Inquiries: Bureau of Executive Personnel, Systems Development & Evaluation Section (202) 632-4617

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Presidential Exclusion of Agencies from the Senior Executive Service

Policy:

Requests for exclusion of an entire agency or for a unit within the agency, or for a particular group of like positions within the agency must be made in writing to the Director of the Office of Personnel Management by the head of the agency. ("Agency" means Executive agency as defined in 5 U.S.C. 105. This means that requests from agencies which are parts of Cabinet departments must come from the department head.)

Presidential exclusions, by law, will be temporary. Duration of the exclusion will be determined on a case-by-case basis. Agencies with exclusions must work toward eventual inclusion in SES.

Agency Procedure:

An agency must determine whether or not it wishes to request a Presidential exclusion. If it decides to do so, it must prepare a request to the Director, OPM:

- identifying exactly which positions and how many would be removed from SES coverage if the exclusion were granted;
- describing the personnel system governing the positions;
- giving a detailed justification of the proposed exclusion; and
- requesting a duration for the exclusion with an explanation.

OPM Procedure:

The OPM will review the request. It may conduct an on-site review or may proceed on the content of the written request. OPM will notify the agency head of its decision in the matter. If the agency request for exclusion is rejected, the agency may ask the Director of OPM to reconsider and may present any additional arguments or evidence to support its request for exclusion. If OPM recommends an exclusion to the President, the President has the option either to grant the request or to reject it.

Normally, if the exception is granted, it will be for a specified period, and OPM during this period will monitor agency progress toward converting to SES. In some instances, an indefinite exception may be granted but even in such cases the agency must work toward eventual inclusion and its progress will be monitored.

The OPM, on its own motion, may, by law, at any time request the President to rescind an agency exception or to change the duration of an exception. In such a case OPM would first notify the agency of its intention and would give the agency 30 days in which to present arguments to the contrary.